

COMPLAINT FOR BREACH OF CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING / INSURANCE BAD FAITH

I.
BACKGROUND

1. Plaintiff LISA HOAAS has been a resident and citizen of the State of California at all times relevant to this matter.

2. LISA HOAAS alleges that Defendant Sun Life Assurance Company of Canada (SUN LIFE) is a Canadian corporation duly organized and existing under and by virtue of the laws of the State of Massachusetts and are authorized to transact and are transacting the business of insurance in the State of California.

3. LISA HOAAS alleges that SUN LIFE makes all claims decisions on policies that were issued by all companies they have acquired.

4. LISA HOAAS alleges that SUN LIFE is responsible for all matters involving the non-payment of her claims.

5. The corporate headquarters of SUN LIFE is One Sun Life Executive Park, Wellesley Hills, MA 02481.

6. LISA HOAAS alleges that Defendant SUN LIFE adopted and implemented unfair claims handling practices and have utilized those unfair claims handling practices in its role as claims administrator for Plaintiff's individual disability income POLICY.

7. The true names and capacities, whether individual, corporate, government, associate or otherwise of Defendants DOES 1 through 50, inclusive, are unknown to LISA HOAAS who therefore sues said Defendants by such fictitious names. LISA HOAAS will amend this complaint to allege their true names and capacities when ascertained. LISA HOAAS is informed and believes and, therefore, alleges that each of the Defendants designated herein caused injury and damages proximately thereby to LISA HOAAS as herein alleged, and are, therefore, responsible to LISA HOAAS for the damages herein requested.

1 8. LISA HOAAS entered into insurance contracts with SUN LIFE for long-
2 term disability ("LTD") income coverage effective July 1, 2010.

3 9. Defendant SUN LIFE and DOES 1-50 issued POLICY of insurance to
4 LISA HOAAS (Policy No. 2131860) for which she paid all premiums (hereinafter "the
5 POLICY") and attached hereto as Exhibit A.

6 10. LISA HOAAS fully performed all duties required of her under the POLICY.

7 11. At all relevant times prior to April 3, 2012, LISA HOAAS was a Senior Risk
8 Management Analyst at the County of El Dorado (CA). In this role, she managed the
9 insurance coverage and health benefit programs offered to county employees. LISA
10 HOAAS acted as a liaison between insurance companies and employees to solve
11 benefit coverage problems. Plaintiff also assisted employees in enrolling in insurance
12 and other benefit programs. The position was sedentary in nature and required that
13 Plaintiff maintain accurate records/files, prepare written reports, write written
14 correspondence, and communicate with insurance companies by phone and email.
15 LISA HOAAS worked an average of 40 hours per week in this position. At a bare
16 minimum, Plaintiff's occupation required that she have full use of both hands.

17 12. LISA HOAAS suffers from medical conditions that independently and
18 comorbidly render her Totally Disabled under the terms of the POLICY.

19 13. Plaintiff has been diagnosed with degenerative joint disease in her right
20 thumb. On April 3, 2012, Plaintiff underwent reconstructive surgery in efforts to repair
21 the limb. Physicians engaged in CMC resection arthroplasty of Plaintiff's right thumb,
22 while transferring an FCE tendon from her right forearm. Doctors also performed a joint
23 fusion of Plaintiff's right thumb metacarpophalangeal joint. Complications from the April
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1 3, 2012 surgery have permanently disabled LISA HOASS from performing Any
2 Occupation, within the meaning of the POLICY.

3 14. Plaintiff has been diagnosed with Complex Regional Pain Syndrome Type
4 1 in her right hand. LISA HOASS has chronic pain, muscle atrophy, and nerve damage
5 at the surgery site. She has lost sensitivity in her right hand and can no longer perform
6 tasks that require fine motor skills. Plaintiff is right-hand dominant and has limited use
7 of her left hand as the result of arthritis.

8 15. Since surgery on April 3, 2012, Plaintiff has treated degenerative joint
9 disease, Complex Regional Pain Syndrome, and arthritis with a team of physicians near
10 her home in Folsom, CA. Dr. Christopher Wilson, Dr. James Siy, and Dr. Michael Yang,
11 have repeatedly examined Plaintiff's right hand and determined that she is permanently
12 disabled from performing the work duties of Any Occupation as a result of chronic pain
13 and lack of mobility in her right hand.

14 16. Since April 3, 2012, Plaintiff has been Totally Disabled from performing
15 the substantial and material duties of Any Occupation that she is or could become
16 reasonably qualified for by education, training, and experience.

17 17. Plaintiff filed a claim for LTD benefits under the POLICY after undergoing
18 surgery. SUN LIFE requested that Plaintiff attend an Independent Medical Evaluation
19 (IME) with Dr. Michael Bernhard in Sacramento, CA. After physically examining Plaintiff
20 and reviewing her medical records, Dr. Bernhard determined that LISA HOAAS was
21 Totally Disabled and recommended that she be placed on LTD benefits.

22 18. SUN LIFE determined that Plaintiff met the POLICY's definition of Total
23 Disability on April 3, 2012. Defendant paid Plaintiff LTD benefits from September 30,
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1 2012 until May 31, 2016.

2 19. In March 2014, Plaintiff was required to undergo an IME for a state
3 Worker's Compensation claim. Orthopaedic Surgeon Ronald Wolfson physically
4 examined LISA HOAAS and spent more than 15 hours of total time reviewing her case
5 for the IME. Dr. Wolfson ruled that Plaintiff was permanently, totally disabled as a result
6 of the injury to her dominant hand. The IME physician's detailed findings were supplied
7 to Defendant in a 39-page report (See Exhibit B).

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9 20. Each and every doctor that has physically examined Plaintiff has
10 independently determined that she is Totally Disabled.

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12 21. On February 27, 2015, Defendant offered Plaintiff a lump sum buyout of
13 her POLICY for \$60,000. In exchange for the lump sum payment, Plaintiff would have
14 to release all rights to future LTD benefits under the POLICY. The \$60,000 buyout
15 offered by SUN LIFE is far less than the total amount of benefits owed to Plaintiff under
16 the POLICY.

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18 22. On June 16, 2016, Defendant denied LISA HOAAS' claim (See Exhibit C)
19 solely on the basis that an undisclosed medical consultant read Plaintiff's medical
20 record and opined that she should have limited physical restrictions. This opinion
21 contrasts starkly with that of SUN LIFE's own IME physician, Dr. Bernhard, who
22 physically examined Plaintiff and determined that she is Totally Disabled.

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24 23. Defendant has denied benefits that LISA HOAAS is owed under the
25 POLICY with full awareness that she is Totally Disabled.

26 24. The total disability provision of the POLICY in issue provides LTD benefits
27 until age 65. By its failure to pay total disability benefits, Defendant will deprive LISA
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HOAAS of the amount entitled to her under the POLICY.

25. At the time of the filing of his claim, and at all times thereafter, LISA HOAAS is entitled to receive disability benefits under the Total Disability provisions of his POLICY.

II.
FIRST CAUSE OF ACTION

(Breach of Contract against SUN LIFE and DOES 1-50.)

26. Plaintiff LISA HOAAS incorporates by reference paragraphs 1 through 25, inclusive, of the complaint as though set forth in the cause of action.

27. Despite Defendant's obligation to pay LISA HOAAS her total disability benefits pursuant to her POLICY and California law, SUN LIFE has failed to provide her with LTD benefits (and continues to do so presently). In failing to pay LISA HOAAS the benefits due, and in forcing LISA HOAAS to obtain representation before paying her the benefits to which she is due, SUN LIFE and DOES 1 through 50 have breached and continue to breach their contracts of insurance with LISA HOAAS.

28. SUN LIFE is well aware that any payment of benefits under these circumstances no longer can make LISA HOAAS whole for Defendant's breaches.

29. As a direct and proximate result of the said breach, LISA HOAAS has been injured and damaged in an amount to be determined according to proof at trial.

30. As a direct and proximate result of the said breach, LISA HOAAS has been injured and damaged in incurring attorney's fees and costs in connection with this lawsuit and in connection with an attempt to obtain benefits to which she is entitled in an amount to be determined according to proof at trial.

WHEREFORE, LISA HOAAS prays judgment against Defendant as hereinafter

1 set forth.

2 III.

3 SECOND CAUSE OF ACTION

4 (Breach of the Covenant of Good Faith and Fair Dealing / Insurance Bad
5 Faith Against Defendant SUN LIFE and Does 1-50)

6 As and for a separate and distinct SECOND CAUSE OF ACTION, Plaintiff LISA
7 HOAAS complains against Defendant SUN LIFE and Does 1-50 as follows.

8 31. Plaintiff incorporates by reference each and every paragraph of the
9 complaint as though set forth in the cause of action.

10 32. At all times herein relevant, SUN LIFE agreed to act in good faith and
11 deal fairly with LISA HOAAS when they entered into the POLICY and accepted
12 premiums. Said Defendant thereby assumed a special relationship with and fiduciary-
13 like obligations to LISA HOAAS, and agreed to abide by its said duties. Nevertheless,
14 said Defendant refused and failed to act in good faith and deal fairly with LISA
15 HOAAS, and breached said obligations, as is set forth in more particularly below.

16 33. In the absence of a reasonable basis for doing so, and with full
17 knowledge and/or conscious disregard of the consequences, said Defendant has
18 failed and refused to provide LISA HOAAS the appropriate benefits promised under
19 the POLICY and the laws of California.

20 34. Defendant engaged and continue to engage in a course of conduct to
21 further their own economic interest and in violation of their contractual and fiduciary
22 obligations to LISA HOAAS, including, but not limited to:

- 23 a. Unreasonably failing to pay the correct benefits of the POLICY;
24 b. Failing to provide promptly a reasonable explanation of the basis
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1 relied on in the insurance POLICY for its failure to pay the correct
2 benefits;

3 c. Failing to pay the benefits which LISA HOAAS was entitled to receive
4 based on insufficient and inadequate medical information;

5 d. Failing to place the financial interests of LISA HOAAS on an equal
6 par with said Defendant's own financial interests;

7 e. Attempting to make Plaintiff accept a \$60,000 buyout of her LTD
8 benefits, which are worth much more than the sum offered;

9 f. Forcing LISA HOAAS to hire an attorney to obtain the benefits of the
10 POLICY due to her; and

11 g. Other such unreasonable conduct that is unknown at this time.

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14 35. Said Defendant's actions were all part of a pattern and practice of denying
15 and terminating long-term disability income claims issued to professionals in
16 California, on specious bases in order to reduce overall reserves and improve the
17 company's financial condition.

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19 36. In doing the acts listed above, Defendant's acts breached the covenant of
20 good faith and fair dealing, and constitute unfair claims settlement practices.

21 37. Said Defendant continue to engage in the aforementioned acts, and said
22 conduct and bad faith constitutes a continuing tort and continuing bad faith to LISA
23 HOAAS, causing her continuing damage as described herein beyond the date of the
24 filing of the action.

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26 45. As a direct and proximate result of the aforementioned conduct of said
27 Defendant, LISA HOAAS has been damaged in an amount in excess of the minimum
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jurisdiction of the court, to be proven at trial.

46. As a further direct and proximate result of the aforementioned conduct of Defendant, LISA HOAAS has suffered worsened physical condition, mental and emotional distress including, but not limited to, fear, aggravation, depression, humiliation and anxiety and has thereby incurred general damages in a sum in excess of the jurisdiction of the court to be determined according to proof at trial.

47. As a further, direct and proximate result of the aforementioned conduct of SUN LIFE, LISA HOAAS has been obliged to expend or incur liability for costs of suit, attorneys' fees and related expenses in an amount not yet fully ascertained, but which will be submitted at the time of trial.

48. As a further, direct and proximate result of the aforementioned conduct of said Defendant, LISA HOAAS has suffered other special damages in amounts according to proof at the time of trial which include, but are not limited to, his inability to replace the POLICY under the terms and conditions represented to her.

49. In doing the acts set forth above, Defendant acted fraudulently, maliciously, oppressively, and in conscious disregard of LISA HOAAS's rights and in a despicable fashion. LISA HOAAS is therefore entitled to punitive damages in a sum sufficient to punish Defendant so that such conduct will not take place again.

WHEREFORE, LISA HOAAS prays for judgment against Defendant as hereinafter set forth.

PRAYER FOR RELIEF

AS TO THE FIRST CAUSE OF ACTION:

WHEREFORE, LISA HOAAS prays for relief as follows:

1. General damages against Defendant SUN LIFE and DOES 1-50 for the failure to provide the promised benefits under the subject contract of insurance in a sum to be determined at the time of trial, and a return of the premiums which Defendant has required LISA HOAAS to pay to keep the POLICY in force.

2. Special damages in an amount according to proof;

3. For such other and further relief as the Court deems just and proper.

AS TO THE SECOND CAUSE OF ACTION:

WHEREFORE, plaintiff LISA HOAAS prays for relief as follows:

4. General damages against Defendant SUN LIFE and DOES 1-50 for mental and emotional distress and other incidental damages in a sum to be determined at trial;

5. Special damages in an amount according to proof;

6. Punitive and exemplary damages;

7. For costs of suit herein incurred;

8. For reasonable attorneys' fees; and

9. For such other and further relief as the Court deems just and proper.

1 Dated: October 4, 2016

Respectfully submitted,

RAY BOURHIS ASSOCIATES

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5 By: 

Eric Whitehead
Attorney for Plaintiff,
LISA HOAAS

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11 DEMAND FOR JURY TRIAL

12 Plaintiff LISA HOAAS herewith demands a jury trial on all issues.

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14 Dated: October 4, 2016

Respectfully submitted,

RAY BOURHIS ASSOCIATES

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18 By: 

Eric Whitehead
Attorney for Plaintiff,
LISA HOAAS